IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6101 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GULMOHAR COOPERATIVE HSG.SOC. LTD. - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

NOTICE SERVED for Petitioner(s) : 1,MR AR MAJMUDAR for Petitioner(s) : 1,MR NK MAJMUDAR for Petitioner(s) : 1, GOVERNMENT PLEADER for Respondent(s) : 1, NOTICE SERVED for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/04/2006

ORAL JUDGMENT

1. By way of this petition, under Articles 226 and 227 of the Constitution of India, the petitioner society has challenged the legality and validity of the order passed by the Additional Chief Secretary, Revenue Department

(Appeals), State of Gujarat dated 20-11-1990/3-1-1991 passed in Revision Application No. SRD/LND/452/84 in quashing and setting aside the non-agricultural use permission granted by the Taluka Development Officer, Bharuch dated 23-10-1982.

2. The Taluka Development Officer, Bharuch by order dated 23-10-1982 granted NA use permission for residential purpose with respect to land bearing survey No.136 situated at village Maktampura, Dist: Bharuch in favour of original land owner Shri Saiyad Altaf Hussai Musamiya. The said permission came to be taken under suo motu revision by the State Government by show cause notice dated 26-2-1985 alleging inter alia that the Taluka Development Officer has not fixed the amount of premium properly and that the common plot is kept on the back side instead of keeping it in the middle of the plot and the petitioner and other persons were called upon to show cause why the NA use permission granted by the Taluka Development Officer dated 23-10-1982 should not be cancelled. It appears from the record that the petitioner submitted reply dated 9-9-1990 and submitted that the original land owner has paid the non-agricultural premium and the society has purchased the property after the plotting by the original land owner and the premium fixed

by the Taluka Development Officer is just and proper and the construction is as per plan approved by the Town Planning, Vadodara and therefore, it is requested to withdraw the notice.

3. That the Additional Chief Secretary, Revenue Department (Appeals), State of Gujarat i.e. the revisional authority by its impugned order dated 20-11-1990/3-1-1991 quashed and set aside the order passed by the Taluka Development Officer, Bharuch dated 23-10-1982 by which the NA use permission was granted on the ground that the amount of premium is not properly fixed, the common plot is not kept in the middle of the plot and that instead of 22 sub plots, 28 residential buildings are constructed. Thus, the construction is contrary to the sanctioned plan. Being aggrieved by with the order passed by the revisional authority dated 20-11-1990/3-1-1991, the petitioner society has preferred the present Special Civil Application under Article 226 and 227 of the Constitution of India.

4. Shri Suthar, learned advocate appearing on behalf of the petitioner has vehemently submitted that exercising of powers by the revisional authority was after unreasonable period, more particularly, in between

members of the society has put up the construction for residential purpose after taking the loan. He has also further submitted that in fact the impugned order is based beyond the scope of the show cause notice and there is no allegation in the show cause notice that the construction is not in accordance with sanctioned plan and some more residential units are constructed. While relying upon the unreported judgment of this court in the case of Rashminkumar Jayantilal Joshi and Others V. The Principal Secretary, Revenue Department (Appeals) and Another reported in 1994(2) GLH UJ 1, Shri Suthar has submitted that the common plot is not kept in the middle of the plot and it is kept on the rare portion of the land and/or some other place, cannot be the ground to set aside the NA use permission. He has also further submitted that even the revisional authority has also not stated how the amount of premium fixed by the Taluka Development Officer is not proper and the petitioner would be ready and willing to pay the amount of premium to be determined as on 1982 considering the government resolution dated 20th May, 1980 as mentioned in the show cause notice.

5. Shri Desai, learned AGP while supporting the order passed by the revisional authority has submitted that the

order passed by the revisional authority is just and proper and as it is found that apart from the fact that whether the amount of premium is properly fixed or not even it is found that as per the lay out plan sanctioned by the Taluka Development Officer, there were 22 sub plots. However, in fact it is found that 22 residential buildings are constructed, which is contrary to the sanctioned plan and that even the construction is also not according to sanctioned lay out plan and even the common plot is also not kept as per the sanctioned lay out plan and therefore, it is requested to dismiss the present Special Civil Application.

6. Heard the learned advocate appearing on behalf of the parties.

7. It is required to be noted that the NA use permission was granted by the Taluka Development Officer in the year 1982, thereafter, plots were made, plans were submitted and the members of the petitioner society put up the construction and thereafter after a period of three years of granting NA use permission, the revisional authority exercised the suo motu revisional power and cancelled the NA use permission. On going through the impugned order, it appears that the revisional authority

has cancelled the NA use permission on some of the ground which are not mentioned in the show cause notice and for that no opportunity has been given to the petitioner – society. Thus, the impugned order relying upon some of the ground which is beyond the scope of show cause notice is against the principals of natural justice.

8. One of the ground for setting aside the NA use permission is that common plot is not kept in the middle of the plot as per the sanctioned plan and the same is kept at some other place in the plot. This court in a decision in the case of Rashminkumar Jayantilal Joshi (supra) has held that merely because common plot is not kept in the middle and at some other place in the plot, cannot be the ground to set aside the NA use permission as the basic purpose is to have the common plot and not where the common plot is kept. Under the circumstances, the impugned order on the aforesaid ground, requires to be quashed and set aside.

9. So far as another ground which was there in the show cause notice is that the amount of premium is not fixed properly by the Taluka Development Officer while granting NA use permission. However, in the impugned order, the revisional authority has not stated anything how the

amount of premium is not properly fixed and what would have been the proper amount of premium. As stated above, Shri Suthar has fairly submitted that the petitioner society and the members are ready and willing to pay fair premium as on the date of which the NA use permission was granted and even as per the government resolution dated 20th May, 1980, the reference of which is made in the show cause notice. Under the circumstances, the Taluka Development Officer, Bharuch is required to be directed to determine the amount of premium as on 23-10-1982 considering the government resolution dated 20th May, 1980, the reference of which is made in the show cause notice dated 26-2-1985 after giving an opportunity to the petitioner and the petitioner is directed to pay the difference of the amount of premium within a period of three months from the date of determining the amount of premium as on 23-10-1982 as stated above and such an exercise is to be completed by the Taluka Development Officer i.e. determination of the premium as stated above within a period of six months from the date of receipt of this order. However, so far as the order passed by the revisional authority dated 20-11-1990/3-1-1991 passed in Revision Application No. SRD/LND/452/84 in quashing and setting aside the non-agricultural use permission granted by the Taluka Development Officer, Bharuch dated 23-10-

1982, is concerned, the same requires to be quashed and set aside for the reasons as stated above.

10. For the reasons as stated above and subject to the order that may be passed by the Taluka Development Officer, Bharuch with regard to determination of payment of premium as stated above, the petition succeeds. The order of revisional authority dated 20-11-1990/3-1-1991 passed in Revision Application No. SRD/LND/452/84 is hereby quashed and set aside. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

(M.R.SHAH,J.)

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